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SUPREME COURT, U. S.

No. 249

Supreme Court of the United States

OCTOBER TERM, 1968

HAROLD C. FULLER, *Petitioner,*

v.

STATE OF ALASKA, *Respondent.*

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

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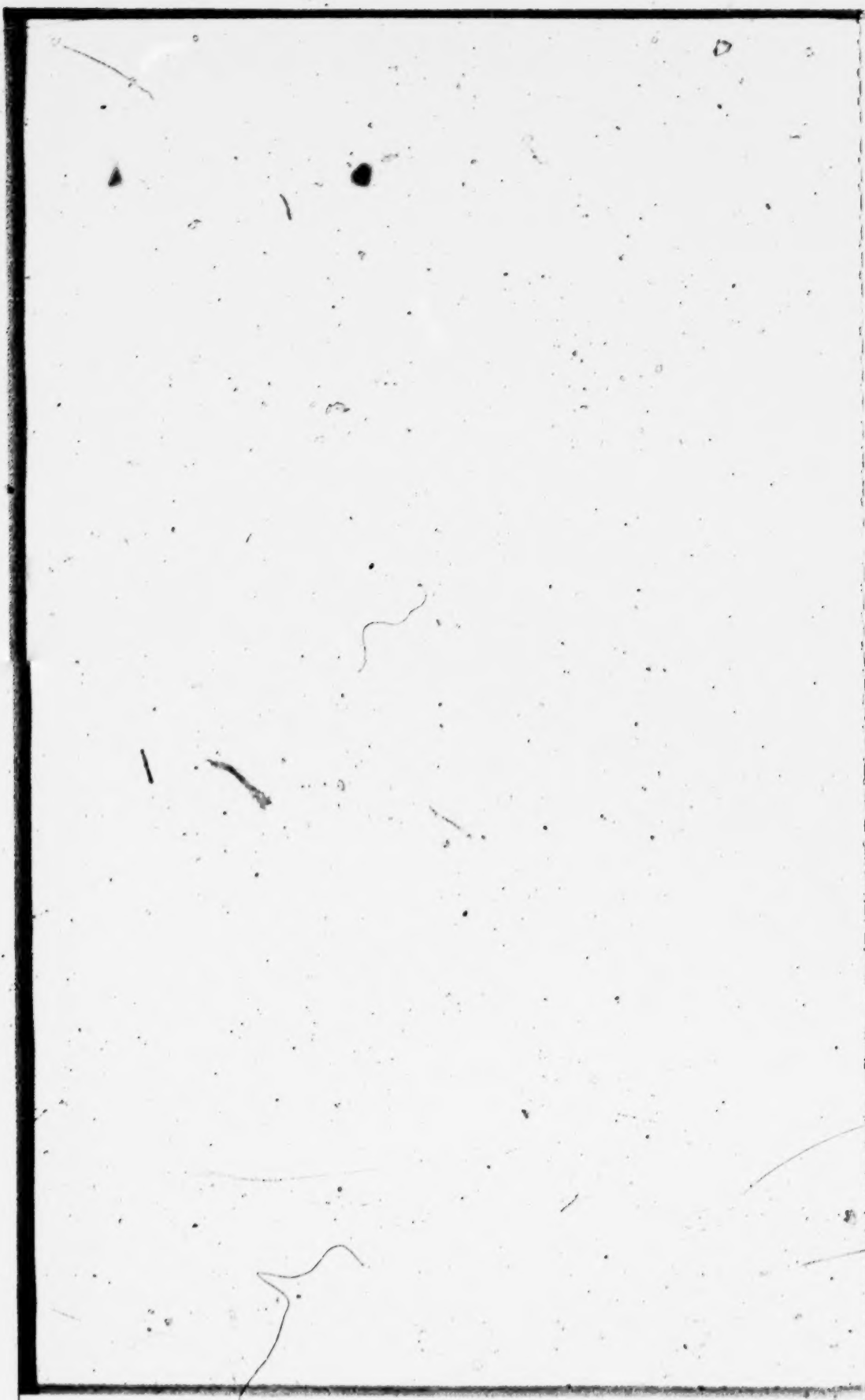
THE ARGUS PRESS SEATTLE, WASHINGTON



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SUPPLEMENTAL STATEMENT OF THE CASE

The following facts omitted by Petitioner are relevant to the issues herein:

At the time of imposition of sentence by the Superior Court of Alaska, Fourth Judicial District, in May of 1965, Petitioner was allowed to continue his release on bond pending appeal. Petitioner's release was expressly conditioned, however, upon his remaining within the United States. Contrary to this express limitation imposed by the Court, Petitioner absconded from the State of Alaska and subsequently from the United States and has traveled to the Republic of Viet Nam.

Warrants of arrest for the Petitioner, a fugitive felon who has absented himself from the jurisdiction of this Court, have been issued by the Superior Court of Alaska, Fourth Judicial District, (App. 1) and by the United States District Court, District of Alaska,

pursuant to the Federal Fugitive Felon Act (App. 2) and are presently outstanding.

OBJECTIONS TO JURISDICTION

Respondent, State of Alaska, contends that this Court should exercise no jurisdiction in this matter because the Petitioner, Harold C. Fuller, has illegally fled the jurisdiction of the courts of the State of Alaska and of the United States, thereby manifesting his refusal to submit to their jurisdiction and abide by the lawful orders thereof. Accordingly, Petitioner should not be entitled to invoke the jurisdiction of this Court since this Court has no jurisdiction over the person of the Petitioner.

The Respondent further objects to the Court assuming jurisdiction in this case on the ground the Petition was not timely filed within the period prescribed by Rule 22(1), of this Court, and that this Petitioner has not shown himself worthy of a waiver of time or other special consideration by this Court.

QUESTIONS PRESENTED

Would the decision of this Court in *Lee v. Florida,* 392 U.S. ....., 36 U.S.L.Wk. 4652, decided June 17, 1968, relative to the admission in a state criminal trial of evidence obtained in violation of Sec. 605, Federal Communications Act, require reversal of an April, 1965, state conviction obtained during the life of *Schwartz v. Texas,,* 344 U.S. 199 (1952)?

REASONS FOR DENYING THE WRIT

The Respondent has asserted throughout appellate

procedures in this case that no violation of Sec. 605 of the Federal Communications Act is involved. The concurring opinion in the Alaska Supreme Court demonstrated that no such violation was established by the Petitioner at trial. If it can be assumed, arguendo, that a violation was present, relevant decisions of this Court indicate that the decision in *Lee v. Florida,* 392 U.S. ....., 20 L.Ed.2d 1166 (June 17, 1968), should not be applied retroactively so as to affect evidentiary rulings in a trial completed thirty-eight (38) months earlier.

The telegraphic communication drawn in question by this Petition would be rendered no less probative or reliable had it been obtained in violation of Federal law. The manner of producing this telegram in question cannot be said to "affect the very integrity of the fact-finding process" or present the "clear danger of convicting the innocent." *Linkletter v. Walker,* 381 U.S. at 639, 14 L.Ed.2d at 614 (1965).

The tests applied by this Court in *Linkletter v. Walker, supra; Tehan v. Shott,* 382 U.S. 406, 15 L.Ed. 2d 453 (1960); *Johnson v. New Jersey,* 384 U.S. 719 (1966); and, *Stovall v. Denno,* 388 U.S. 293, 18 L.Ed. 2d 1199 (1967), denying retroactive application to *Mapp v. Ohio, Griffin v. California, Escobedo, Miranda* and *Wade* are applicable here. The decision of the Supreme Court of Alaska, rendered in reliance upon *Schwartz v. Texas,* 344 U.S. 199 (1952), some months before the decision in *Lee v. Florida, supra,* was announced, should be allowed to stand.

CONCLUSION

The decision in *Lee v. Florida, supra,* should be afforded prospective application only. The Petitioner, having voluntarily absented himself from the jurisdiction of the courts of the State of Alaska and of this Court, should be denied his writ.

DATED at Anchorage, Alaska, this 20th day of September, 1968.

Respectfully submitted,

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